IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

CRP.No. 490 of 2007

(ORDERIN E.A NO. 101/2007 IN E.P NO. 52/1978 ON THE FILE OF THE MUNSIFF COURT, KUTHUPARAMBA, DT. 21/3/2007)

REVN. PETITIONER: PETITIONERS/RESPONDENTS

1. **NIDHIYIRIKKAL THOMAS @ OLIKKEL - PUTHANPURAYIL THOMAS, S/O.MATHAI, AYYANKUNNU AMSOM DESOM, THALASSERY TALUK, KANNUR DISTRICT.**
2. **CHINNAMMA THOMAS, -DO-**
3. **JAISON THOMAS, -DO-**
4. **SANJAI THOMAS, -DO-**

BY ADV. SRI.K.V.SOHAN
SMT.SREEJA SOHAN.K.

RESPONDENTS: RESPONDENTS/PETITIONERS

1. **MANNAMPARAMBIL KUTTIYAMMA JOSEPH, AYYANKUNNU AMSOM DESOM, THALASSERY TALUK, KANNUR DISTRICT.**
2. **P.J.JOSEPH, TEACHER -DO-**
3. **P.J.GEORGE, -DO-**
4. **SUNNY JOSEPH, -DO-**
5. **IVAN THOMAS, S/O.THOMAS, (PETITIONER NO.4) -DO-**

BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A NO. 1280/2007 IN C.R.P NO. 490/2007 C

DISMISSED

25/10/2007. **SD/- M.N.KRISHNAN, JUDGE.**

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M.N. KRISHNAN, J.

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C.R.P. NO. 490 OF 2007

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Dated this the 25th day of October, 2007.

O R D E R

This revision petition is preferred against the order of the Munsiff, Kuthuparamba in E.A.101/07 in E.P.52/78. E.A.101/07 is an application filed for referring the matter to the Land Tribunal to decide the question of tenancy. The decree holder obtained a decree and filed an application for execution of the decree. There was resistance on the part of the present revision petitioner and so the decree holder moved an application under Order 21 Rule 97 of CPC for removal of the obstruction. In that application the present revision petitioner contended that one O.M. Thomas had obtained lease of the property from one Mammu Haji having an extent of 13 acres and it is that property which is attempted to be taken delivery of. He would further contend that he had obtained a certificate of purchase issued by a competent Land Tribunal and further that the matter requires reference under Section 125 (3) of the Kerala Land Reforms Act. The Court below after consideration of the materials

ultimatley decided against the reference mainly on the ground that in view of the notwithstanding clause under Order 21 Rule 101 CPC which will override the provisions of the Kerala Land Reforms Act and therefore as reported in the decision ***Krishnan Asari Velayudhan Asari v. Paramashwaran Pillai Madhavan Pillai (AIR 1989 Kerala 163)*** held against the reference.

2. I feel it is better to analyse the factual matrix to consider the question whether really a dispute arise for reference as contemplated under Section 125(3) of Cr.P.C. It is the case of the plaintiff/decree holder that there was a marupat dated 29.3.1950 whereby 25 acres of land were taken on lease and thereafter by virtue of an oral lease granted by the said Mammu Haji in December, 1953 for 7 ½ acres of land the decree holder had obtained right over the property and thereafter since the defendants had trespassed into the property he had filed a suit for recovery of possession on the strength of title and has obtained a decree for a portion of the property.

3. Now the question to be considered is whether really a reference is necessary under the Kerala Land Reforms Act. The learned counsel for the revision petitioner submts before me that a competent Land Tribunal has issued a certificate of purchase in favour of his wife and since it is issued under Section 72 of the Kerala Land Reforms Act it is a conclusive proof of tenancy unless it is vitiated by fraud or other ground known to them. On the other hand the counsel for the decree holder would submit that the decree holder was not a party to the Land Tribunal proceedings and therefore it is not binding on him. Analysing the contention of both the parties the dispute is whether it is the 1950 lease followed by the subsequent oral lease of 1953 is true of if the lease of 1946 is true. If the property is leased as contended by the revision petitioner herein in 1946 in favour of Thomas the question of leasing out the same property to another person in the year 1950 does not arise and also a further lease in the year 1953. Therefore, the question to be adjudicated is whether the lease of 1946 is true or the lease

of 1950 is true. I am specifically using the word lease for the reason that I am aware that a lessee is a tenant but here in this case it is that lease which is claimed as title by the parties or in other words the rival title is who is the lessee of the property under a common landlord. Neither in the suit nor in the execution petition or in the obstruction petition the alleged landlord is a party. Then, one has to consider about the competency of the Land Tribunal to adjudicate the issue of tenancy if it is referred when the alleged landlord has not at all a party to the reference. I feel it will be just the repetition of the same as the attack is made against the certificate of purchase. Therefore, really the subject matter that is involved in the case in the obstruction petition is a rival title of the properties which is based on a lease. So the question to be adjudicated and decided is whether there is a lease of 1946 in favour of Mr. Thomas and if it is established then it goes without saying in the absence of any other materials of surrender that there cannot be any lease of the very same property in favour of another person in 1950 or

later in 1953. Therefore, I find really the question of tenancy much less the entitlement of fixity of tenure under the Kerala Land Reforms Act does not loom large for a decision in this case. If 1946 lease is proved, then the junction of the decree holder is not necessary for the issuance of a certificate of purchase and therefore the certificate of purchase issued by the Land Tribunal will be conclusive and the obstructor will have valid title on the basis of the said document. Therefore, though on different ground I hold that the question of tenancy does not really arise for consideration and confirm the finding of the Court below. I make it clear that the Court below has to approach the subject on the lines mentioned by me in this order for adjudicating the whole question.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-